IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8826 of 1999

to

SPECIAL CIVIL APPLICATIONNo 8868 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

KETANBHAI DINKARRAY PANDYA

Appearance:

MR HS MUNSHAW for Petitioners

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: /2000

CAV JUDGMENT

Learned advocate Mr. Muhshaw is appearing for the petitioners in this group of petitions and Learned [advocate Mr. Pathak is appearing for the respondent workman in each petition.

Rule. Learned advocate Mr. P.H.Pathak appearing for the respondent woakman in each petition has waived service of rule. On the facts and in the circumstances of the case, all these petitions have been taken up for final hearing today itself.

In this group of petitions, this Court (Coram : R.M.Doshit,J.) issued notice to the respondents returnable on 17th December, 1999 and meanwhile, ad interim relief in terms of para 8(C) has been granted.

In the present petitions, the petitioner Board has challenged the order passed by the labour court, Amreli in Recovery Applications Nos. 318 of 1998 to 360 of 1998 (Old Nos. 866 of 1995 to 980 of 1995). The labour Court has passed a common order in the said group of recovery applications under section 33(C)(2) of the Industrial Disputes Act, 1947 ("the ID Act" for short).

The facts of the present petitions, in short, are that the respondent workmen are working with the petitioner Board as a Diesel Operator, Electrical Operator, Attendant, Watchman, Attendant-Filter Plant, Lineman, Lineman cum Chowkidar, Store watchman, Storeman, etc. That all the respondent - workmen had filed the aforesaid recovery applications on the ground that according to the rules of the petitioner Board and under the provisions of the Minimum Wages Act, the respondent workmen are required to work eight hours in a day, meaning thereby, their working hours are eight hours in a day. However, the petitioner board has taken work of 12 hours in a day and the wages for the over time work which has been performed by the respondent workmen has not been paid by the petitioner board and, therefore, the workmen concerned had approached the labour court, Amreli by filing the aforesaid recovery applications inter alia raising demand for over time wages from the petitioner board. However, at that time, the concerned Officer had given threat for terminating their services and, therefore, immediately, no proceedings were filed by the respondent workman. That each respondent workman has given details at annexure "A" to the application wherein the date of joining, working hours, rate of wages, claim

of over time wages and difference of salary etc. The demand was for payment of the legitimate dues with 18 % of interest. According to the respondent workmen, in fact, they had worked for over time and inspite of that, the amount of wages for over time work performed by them have not been paid to them. The claim of the respondent workmen is based on the provisions of the Minimum Wages Act and the Rules framed thereunder and, therefore, it was a pre-existing right of the respondent workmen to claim the over time wages from the petitioner board.

The petitioner Board had contested the claim by filing common written statement at Exh. 7 before the labour court and has disputed the averments made by the respondents in their applications. According to the petitioner board, the work was taken from the respondent workmen according to the policy of the petitioner board and that there was no breach of the provisions of the Minimum Wages Act or the Rules framed thereunder; that the respondent workmen are not the permanent employees of the petitioner board and that the respondents had not worked for over time as alleged. It is also disputed by the petitioner board that the respondent workmen had worked for 12 hours as alleged and, therefore, there is no need to pay the over time wages to the respondent workmen.

The labour Court had consolidated all the said applications with the consent of the parties and after filing of the reply by the petitioner board, the respondent workmen had produced the documents vide Exh. 18. Daily Register of the working hours of the Operator has been produced where the working hours have been mentioned and the same has also been certified by the concerned officer. With the consent of the petitioner board, said document has been exhibited as Exh. 28. The petitioner board has also produced the documents vide Exh. 20 which are Government Resolutions dated 17th October, 1988 and 10th November, 1988. Said documents were objected by the advocate for the respondents and, therefore, they were not exhibited. Affidavit was filed by one of the workmen namely Shri Ketanbhai Dinkarbhai Pandya vide Exh. 16 and he has given details of nature of work, working hours etc. He has also given details in respect of other 42 workmen who are working with him. His evidence was cross examined by the advocate for the petitioner board on 19.1.1999 and thereafter, on behalf of the petitioner board, one S.M.Chauhan, Deputy Executive Engineer was examined vide Exh.27 and his evidence was cross examined by the advocate for the respondent workmen. Thereafter, written arguments were

submitted by both the sides and thereafter, the labour court has considered the oral evidence, documentary evidence and the written arguments submitted by the parties and, thereafter, has passed the impugned orders. The labour court came to the conclusion that the respondent workmen has proved 12 hours working in each day and are entitled for wages for the same as claimed in the recovery applications and the respondents had proved the pre existing right to receive the over time wages from the petitioner board under the provisions of the Minimum Wages Act. The labour court has come to the conclusion that it has jurisdiction under section 33(C)(2) of the ID Act and therefore, the labour court has allowed all the recovery applications and has rejected the claim of interest by passing award on 26.7.1999 and has also granted costs of Rs.501.00 to each respondent workmen.

I have heard the learned advocates for the parties. Mr. Munshaw, the learned advocate appearing for the petitioner board has submitted that the labour court has erred in granting the recovery applications. According to him, there is no policy of the board which would prove the existing right of the respondent workmen. It is also contended that the petitioner board has no source of income and it is dependent upon the grant received from the State Government and it is completely aided by the State Government. He has further submitted that the labour court has no jurisdiction to entertain the applications. He has further submitted that there is no provisions for payment of over time wages and the labour court has erred in not appreciating this aspect. He has submitted that there was delay in filing the applications before the labour court. He has submitted that only one witness namely Shri Ketanbhai Pandya was examined on behalf of all the respondent workmen and no other workmen were examined. He has further submitted that the labour court has ignored the oral evidence of Shri SUreshbhai Chauhan. He has further submitted that the findings of the labour court are baseless and perverse. He has read over the entire findings of the labour court and the written arguments submitted by the petitioner board before the labour court. He has submitted that it amounts to adjudication under section 10(1) of the ID Act and while exercising the powers under section 33(C)(2) of the ID Act, the labour court has no power of adjudication. He has relied upon the following decisions of the apex court and the High Court :

(1) Naranji Peraji Transport Co. v/s. Ramnikbhai B. Vaghela, [1998-2 GLR 984]

(2) Municipal Corporation of Delhi versus Ganesh Razak and Anr. [JT 1994 (7) SC 476]
(3) Chief Superintendent, Government Livestock Farm, Hissar versus Ramesh Kumar [1998 SCC (L & S) 150]
(4) Tara and others versus Director, Social Welfare and others [1998 (2) LLJ 632]
(5) State Bank of Bikaner and Jaipur versus RL Khandelwal [1968 Company Cases Vol.38 pg. 400]
(6) Central Inland Water Transport Corporation Ltd. versus The Workmen and anr. [1975(1) SCR pg.153.
(7) Chief Mining Engineer East India Coal Co.Ltd. versus Rameshwar and Ors. [(1968) 1 SCR pg.140]
(8) AIR 1964 pg.743 and 753

On the other hand, Mr. Pathak, the learned advocate appearing for the respondent workmen has submitted that the right to recover the over time wages is a statutory right under section 13 and 14 of the Minimum Wages Act and Rule 25 of the Rules framed thereunder and the Minimum Wages Act is applicable to the petitioner board which fact has not been disputed by the petitioner board and the petitioner board is covered under rule 25(ii) which provides for over time wages in relation to any other scheduled employment at double the ordinary rate of wages. According to Mr. Pathak, it is the pre-existing right of the workmen and the labour court was right in deciding so. He has further submitted that the 12 hours' work of the workmen has not been disputed by the petitioner during the course of oral evidence. He has submitted that the worksheet has been produced by the respondent wherein a signature of the concerned officer was there and the 12 hours working including over time wages has been certified by the concerned Officer. He has submitted that the over time work has been proved by the nature of duties, demand of the work and the necessity. He has submitted that though Mr. Pandya was examined on behalf of the respondent workmen, but each workman had also submitted separate statement of their working hours. He has submitted that there is no limitation provided under section 33(C)(2) of the ID Act and, therefore, there was no question of delay in filing the applications and that question has been examined by this Court in the decision reported in 1998 (2) GLH 996. According to him, the labour court has jurisdiction to decide even incidental question under the recovery application and merely because the claim of the workman has been disputed by the employer, that itself will not oust the jurisdiction of the labour court. He has submitted that section 33(C)(1) and (2) both are independent sections. He has submitted that section

33(C)(2) is wide enough to cover the claim based on any statutory provisions. He has submitted that the labour court has given the findings which are based on the evidence on record and no jurisdictional error has been pointed out. He has further submitted that there is no infirmity in the impugned orders passed by the labour court and the orders of the labour court are based on the legal evidence and, therefore, this court should not interfere with the same while exercising the powers under Article 226 and/or 227 of the Constitution of India. Mr. Pathak has relied upon the decisions of the apex court in case of Ishwarbhai Prahladbhai Patel and others reported in 1983-I SCC 403; AIR 1964 page 743 and 1998(2) GLH 996; AIR 1968 page 218.

I have perused the entire award passed by the labour court. I have also considered the submissions made by both the learned advocates for the respective parties. Before dealing with the contentions raised by both the learned advocoates, it is necessary to consider the relevant provisions of section 33 (C)(2) of the ID Act as also the relevant provisions of the Minimum Wages Act. Section 33C relates to recovery of money due from an employer. It reads as under:

"33C. Recovery of money due from an employer :

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorized by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is due, it shall issue a certificate for that amount to the collector who shall proceed to recover the same in the same manner as an arrears of land revenue.

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is

satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then, the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as maybe specified in this behalf by the appropriate Government within period not exceeding three months.

Provided that where the presiding officer of a labour court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the labour court may, if it appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the labour court and the labour court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the labour court shall be forwarded by it to the appropriate Government and any amount found due by the labour court may be recovered in the manner provided in sub sec.(1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

Explanation.- In this section, 'labour court' includes any court constituted under any law relating to investigation and settlement of industrial disputes in force in any State. "

Section 13, 14 and 15 of the Minimum Wages Act are relevant for the purpose of deciding this petition. Section 13 of the Minimum Wages Act reads as under:

"13. Fixing hours for a normal working day, etc.-

(1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may, -

(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest.

(c) provide for payment for work on a day of rest at a rate not less than the over time rate.

(2) The provisions of sub sec.(1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:-

(a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;
(b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on out side limits laid down for the general working in the employment concerned.
(c) employees whose employment is essentially intermittent;
(d) employees engaged in any work which for technical reasons has to be completed before the duty is over;
(e) employees engaged in a work which could not be carried on, except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub section (2), employment of an employee is essentially intermittent when it is declared to

be so by the appropriate Government on the ground that the duty hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention."

Section 14 of the Minimum Wages Act reads as under:

"14. Overtime.- (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day, or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act,1948,in any case where those provisions are applicable."

Section 15 of the Act reads as under:

"15. Wages of worker who works for less than normal working day.- If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day.

Provided however, that he shall not be entitled to receive wages for a full normal working day.-

(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him work, and

(ii) in such other cases and circumstances as may

be prescribed."

Sec.20(1) of the Act is also relelvant for the purpose. It reads as under:

"20. Claims. (1) The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a labour commissioner for any region,or any officer of the State Government not below the rank of labour commissioner or any other officer with experience as a Judge of a Civil Court or as stipendiary Judicial Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub section(1) of section 13 or of wages at the over time rate under section 14 to employees employed or paid in that area."

Now Rule 25 of the Rules framed under the Minimum Wages Act relates to extra wages for over time. Rule 25(1) is relevant for the purpose. It reads as under:

"25. Extra wages for overtime.- (1) When a worker works in an employment for more than nine hours on any day or in any employment other than an employment in public motor transport for more than forty eight hours in any work or for more than the hours of work notified under sub rule (6) of rule 24, as the case may be, in respect of overtime work, be entitled to wages.-"

The Industrial Disputes Act, 1947 as originally enacted does not provide any speedy remedy to the individual workmen enabling them to enforce their existing rights. This provision, to certain extent, fill up the lacuna which was discovered. It purported to supply a speedy remedy to an individual workman after an award was made to implement or execute the relief given to him under the award. Sub section (1) of the section provided that if money was due to an employee from his employer under an award or decision of the Industrial Tribunal, it may be recovered as an arrears of land

revenue. Sub section (2) of sec. 33C deals with the cases where any workman was entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which was capable of being computed in terms of money and it provided that the amount of which the said benefit could be computed may be determined subject to the Rules and the amount to determine could be recovered as provided. Sec. 33C provides both a forum and procedure for computing both monetary as well as non-monetory benefits in terms of money and further provides machinery for recovery of such claims. I have considered three decisions of the apex court in case of Punjab National Bank Ltd. versus Kharbanda (KL) [1962] 1 LLJ 234 SC; in case of Central Bank of India Ltd. v. P.S.Rajagopalan [1963] II LLJ 89 SC; and in case of Bombay Gas Co. Ltd. v. Gopal Bhiva [1963] I LLJ 608 (SC).

The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognized the need of individual workmen of a speedy remedy to enforce their existing individual rights and, therefore, inserted sec.33A in 1950 and S.33C in the year 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to S.10(1) and without having to depend on their union to espouse their case.

In view of the history two considerations are relevant while construing the scope of S. 33C Where industrial disputes arise between workmen acting collectively and their employees, such disputes must be adjudicated upon in the manner prescribed by the Act, as for instance, under S> 10(1) But having regard to the legislative policy to provide a speedy remedy to individual workmen for enforcing their existing rights, it would not be reasonable to exclude their existing rights sought to be implemented by individual workmen. Therefore, though in determining the scope of S> 33C care should be taken not to exclude cases which legitimately fall within its purview, cases which fall, for instance, under S. 10(1) cannot be brought under S. 33C. Further, Section 33C which is in terms similar to those in S. 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, is a provision in the nature of an executing provision.

Section 33C(1) applies to cases where money is due to a workman under an award or settlement or under

Chapter V-A of the Act already calculated and ascertained and, therefore, there is no dispute about its computation. But sub-section (2) applies both to non-monatory as well as monetary benefits. IN the case of monetary benefit it applies where such benefit though due is not calculated and there is a dispute about its calculation.

Section 33C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit of which their claim is barred is disputed by their employees. It is open to the labour court to interpret the award or settlement on which the workmens' right rests.

The fact that the words of limitation used in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950 are omitted in Section 33C(2) shows that the scope of Section 33C(2) is wider than that of Section 33C(1). Therefore, whereas sub section(1) is confined to claims arising under an award or settlement or Chap. V-A, claims which can be entertained under Sub section (2) are not so confined to those under an award, settlement or Chapter V-A.

Though the Court did not indicate which cases other than those under sub section(1) would fall under sub section(2) it pointed out illustrative cases which would not fall under sub section (2) viz. cases which would approximately be adjudicated under section10(1) or claims which have already been the subject matter of settlement to Ss.18 and 19 would apply.

Since the proceedings under section 33C(2) are analogous to execution proceedings and the labour court called upon to compute in terms of money the benefits claimed by a workman is in such cases in the position of an executing court, the labour court like the executing court in execution proceedings governed by the Code of Civil Procedure, is competent under section 33C(2) to interpret the award or settlement where the benefits claimed under such award or settlement and it would be open to it to consider the plea nullity where the award is made without jurisdiction.

To complete the picture,one more proposition may be added to the above as enunciated by the Supreme Court in the same cases.

It is not essential that the claim which can be

brought before the Government or its delegate under section 33C (1) must always be for a predetermined sum. The Government or the Labour Court may satisfy itself about the exact amount and then take action under that section.

Now sub section (2) relates to distinction in scope of jurisdiction under sub section(1) and (2). Section 33C(2) is wider than section 33C (1). In this connection, the legislative intention disclosed by the language of these two sub sections is fairly clear. Under sub section (2) where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and, if any question arises as to the amount of money due or as to the amount at which the benefit should be computed, the question has to be decided by the labour court. The labour court may appoint a commissioner to submit a report and the commissioner can take evidence also. The decision of the labour court has to be sent to the Government and any amount found due has to be recovered as provided in sub section (1).This provision contemplates an enquiry into the existence of the right and such an enquiry is only incidental to the main determination which is to be made by the labour Court(s). The inter relation between sub sections (1) and (2) has been examined by the Supreme Court in several decisions.

The Division Bench of the Calcutta High Court, in case of Jessop & Co. v. M. Mukerjee, 1975 Lab. IC 1307, has land down the following principles in the areas of jurisdiction under the two sub sections:

"(1) Where any money is due under a settlement or an award or under the provisions of Chapter V-A, Section33C(1) will be attracted.

(2) The money due under S. 33C(1) may be a specified amount or may have to be arrived at by arithmetical calculation or verification simpliciter. In other words, in cases where there is no dispute as to the amount or as to the computation, section33C(1) would apply.

(3) Section 33C(2) is more comprehensive than Sec.33C (1) It applies not only to cases of a settlement or award or to cases under Chapter V-A of the Act but to other cases as well.

(4) When money due is not specified or the

benefit capable of being computed in terms of money has not been determined, Section 33C(2) would be attracted inasmuch as the labour Court, by a process of computation to be found out and applied by it, has to determine the amount of money due. In other words, in cases of disputes as to calculation or computation of money due or benefit capable of being computed in terms of money, Section 33C(2) has to be involved.

(5) Section 33C(2) also enables a Labour Court to enquire into and decide upon the right to receive the money to be computed provided that the determination of that right is incidental or ancillary to computation. "

As regards the jurisdiction of the labour court, after the amendment by Act 36 of 1964, there are two parts of this sub section. The first part is concerned with the money claims simpliciter and the second part speaks about computation in terms of money and of any benefit to which the workman is entitled. On a plain reading of the wording of the statute, it would appear that where any workman is entitled to receive from his employer any money and if any question arises as to the amount of money, then the question may be decided by the labour court.

The expression "if any question a rises as to the amount of money due" embraces within its ambit any one or more of the following kinds of disputes.-

(1) whether there is any settlement or award as alleged?
(2) whether any workman is entitled to receive from the employer any money at all under any settlement or an award etc.?
(3) if so, what will be the rate or quantum of such amount?, and
(4) whether the amount claimed is due or not ?

Broadly speaking, there will be the disputes which will be referable to the question as to the amount of money due. If the right to get the money on the basis of the settlement or the award is not established, no amount of money will be due. If it is established, then, it has to be found out, albeit, it may be by mere calculation, as to what is the amount due. For finding it out, it is not necessary that there should be a dispute as to the amount of money due also. The fourth

kind of dispute obviously and literally will be covered by the phrase "amount of money due". A dispute as to all such questions or any of them would attract provisions of section 33(C) (2) of the Act and make the remedy available to the workmen concerned.

There is marked difference between the language of this sub section before and after its amendment by the Amending Act of 1964. This sub section before the amendment was confined only to "any benefit" computable in terms of money to which a workman was entitled from his employer which in contradiction to the words "any money is due to a workman from an employer " in sub section (1) marked the distinction in the scope of jurisdiction under the two sub sections. The language of the unamended sub section (2) was vague as it did not specify as to under what circumstances the Labour Court could determine the "benefit" by computation in terms of money but the present sub section clearly states that "if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any Rules, that may be made under this Act, be decided by such Labour court". To invoke the jurisdiction of the labour court under Section 33C(2) either of the two ingredients must be present. The first is that a workman must be entitled to receive from the employer any money or benefit which is capable of being computed in terms of money and the second one is that a question must have arisen as to the amount of money due or as to the amount at which such benefit should be computed. A plain reading of the section shows that the labour court has jurisdiction to decide both these ingredients.Thus, in a case where both these ingredients are satisfied or either these ingredients is satisfied, the labour court will have jurisdiction to determine the question. The Legislature has empowered the Labour court to decide a dispute as to the right of workman to receive from the employer any money or any benefit which is capable of being computed in terms of money and also has authorized it to decide the question as to the amount of money due or as to the amount at which such benefit should be computed.

The scope of the jurisdiction of the labour court under section 33C(2) was considered by the Supreme Court in the three leading cases. In case of Punjab National Bank Ltd. v. K.L. Kharbanda reported in [1962] I LLJ 234 SC, construing the words "any benefit which is capable of being computed in terms of money,", has held that where the benefit to which a workman may be entitled has not already been calculated, for example, in an

award, which confers on him the benefit sub section(2) would apply for computation of such benefit if there is a dispute about it. Glossing on this holding, in case of Central Bank of India Ltd. versus P.S. Rajagopalan reported in [1963] II LLJ 89 (SC), it has been held that it should not be interpreted to mean that the scope of section 33C(2) is exactly the same as in section 33C(1) and further pointed out that "the three categories of claim mentioned in section 33C(1) fall under section 33C(2) and in that sense, claims not based on settlements, awards or made under the provisions of Chapter V-A, may also be competent under section 33C(2) and that may illustrate its wider scope." In other words, the labour court acting under section 33C(2) is competent to entertain claims made de hors settlements, awards or the provisions of Chapter V-A. Section 33C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled would be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers and it is open to the labour court to interpret an award or settlement on which the workman's right rests. In the said case, under the Shastri Award, the clerks of the Central operating adding machines were declared to be entitled to 'special allowance' of Rs. 10 per month. Four clerks had made a claim for computation before the labour court which was resisted by the bank on the ground that the clerks came within the category referred to in the award and that the labour court under section 33C(2) had no jurisdiction to determine whether the clerks came within the category or not. In that connection, in the said decision, it was held that the enquiry as to whether the four clerks came within the category was purely 'incidental' and necessary for the purpose of giving relief asked for and, therefore, the labour court had jurisdiction to enquire whether the clerks answered the description of the category mentioned in the Shastri Award, which not only declared the right but also the corresponding liability of the employer Bank as it took the view that this was purely a case of establishing identity of the claimants as coming within the distinguished category of clerks in default of which it would have been impossible to give relief to anybody falling in the category. The enquiry into the category of the employees was limited only to the clerks' identity and did not extend either to new investigation as to their rights or bank's liability to them, which had declared profit in the year and the labour court did not have to investigate the same. It was also held that essentially, therefore, the function of the labour court was in the nature of a function of a court in the

execution proceedings. Therefore, the labour court had jurisdiction to determine by an incidental enquiry whether the four clerks came in the category which was entitled to a special allowance.

It is clear that the right to the benefit which is sought to be computed must be an existing one,that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. Since the scope of sub section(2) is wider than that of sub section (1) and the sub section is not confined to cases arising under an award, settlement or under the provisions of Chapter V-A, there is no reason to hold that a benefit provided by a statute or a scheme made thereunder without there being anything contrary under such statute or Section33C(2) cannot fall within sub section(2). Consequently , the benefit provided in the bonus scheme made under the Coal mines Provident Fund and Bonus Schemes Act, 1948 which remains to be computed must fall under sub section(2) and the labour court, therefore, had jurisdiction to entertain and try such a claim it being a claim in respect of an existing right arising from the relationship of any industrial workman and his employer.

In case of Delhi Transport Corporation versus DD Gupta reported in 1997 Lab IC page 1757, relevant page 1760, a Single Judge of the Delhi High Court has summarized the position of law emerging out of these dicta as follows :

"1. If the claim of a workman involves an adjudication of disputes which falls within the definition of an industrial dispute, as given in the Act, then, , that dispute cannot be resolved under sec.33C(2).

2. If a claim in the nature of an execution application relating to an industrial award or settlement is made, then, section 33C(2) is available.

3. Even other claims of workman not arising out of awards or settlements can be made under the subject matter of claims under section 33C.

4. If such claims are disputed, the dispute can be resolved and the claims quantified by the labour court, unless the disputes raised amount to

industrial disputes.

5. If there is a subsisting relationship of master and servant or employer and employee, then, the labour court has jurisdiction under section 33C(2) to determine the scope of the contract for quantifying the claim made.

6. If the relationship of master and servant etc. has been terminated, then, the labour court cannot determine the validity of the termination for the purpose of determining a money claim.

7. If a workman makes a claim for additional wages (beyond his contract) or relating to the conditions of his work, then it is a matter beyond the labour court's power under section 33C(2) because the claim falls within the scope of an industrial dispute. "

In case of Anand Oil Industries versus Labour Court, Hyderabad reported in AIR 1979 AP 182 (FB), it has been held by the full bench of the Andhra Pradesh High Court that the claim for minimum bonus under the Payment of Bonus Act,being an existing statutory right, can be tried under sec.33C(2) by the Court. Such a claim cannot constitute an industrial dispute within the meaning of section 22 of the payment ofBonus Act. It is, therefore, not necessary that it should be referred for adjudication to anindustrialTribunal. The labour court can entertain such a claim under section 33C (2) and can determine the amount due.

In case of Kohinoor Tobacco Products Pvt. Ltd. versus Presiding Officer, Second Labour Court,Nagpur reported in [1986] Lab. IC 1055, this holding was followed by the Full Bench of the Bombay High Court. A Similar view has been taken by a Division Bench of the Kerala High Court in case of Poppu v. Raja Tile and Match Works reported in [1989] I LLJ 14. Speaking for the Court, Justice Bhaskaran Nambiyar has laid down as under:

"Section 33C(2) is a cheap,efficacious, speedy summaryremedy for recovery of money or any benefit which is capable of being computed in terms of money by a workman from his employer.This provisions, therefore, applies where there is an enforceable existing right to receive a monetary benefit The remedy under this

> section is, this, akin to executionproceedings. When the dispute is regarding the amount so due, it is a mater to be decided in proceedings initiated under this section. There is, thus, a qualitative difference betweenthe dispute under section 10(1) and the claimunder section 33. A claim under sec.33 for a mere computation of the amount due under an existing right is out side the scope of sec.10(1).The scope of s.33 cannot, of course, be widened to bring within its scope cases which would fallunder sec.10(1). Section 10(1) is intended to resolve a dispute regarding a right asserted and the right disputed while sec.33C is meant to settle the amount claimed under an existing right. The right may accrue under a settlement or award under the ID Act or any of the provisions of Chap. V of the same Act. It may accrue under any other Statute, scheme or agreement. The moneyclaimed pursuant to that right already accrued can be recovered under section 33C(1) or Sec. 33C(2) of the ID Act."

The apex court, in case of Ishwarbhai PrahladbhaiPatel and others reported in 1983 I SCC 403, has held that the tubewell operators concerned in that case were employed in scheduled employment under the local authority or authorities and the Minimum Wages Act is applicabe and they were entitled to the minimum wages and other benefits under the Minimum Wages Act. In another case of Director General (WOrks) CPWD and Ashok Kumar and Others reported in 2000 -I LLJ page 582, challenge to the labour court's entertining and allowing the daily rated employee respondents' application under sectioln 33C(2) of the ID Act for getting regular scale ofpay was held by the Supreme Court as unsustainable for the simple reason that the appellant himslef in implementation of the decision in (1986-I LLJ 403) (SC) had been paying salary to the respondents in the regular scale ofpay. It could not therefore be urged today, that the respondents' right to receive thescale ofpay should first be adjudicated by the labour court having regard to the scope of labour court's power in an application under section 33C(2) of the ID Act. In the said case, case of Municipal Corporation of Delhi versus Ganesh Razak reported in 1995 I LLJ 395 (SC) has been considered. In case of Jeet Lal Sharma versus Presiding Officer, Labour Court-IV, reported in 2000 LLR 443, it has been held by the Delhi High Court as under:

"If the entitlement is based on service conditions, one does not have to take recourse to reference under section 10 of the Act for adjudication of the matter. That situation would have become necessary only if there was a dispute about the entitlement to get the leave encashed.The dispute is not about the entitlement to get the leave encashed but about the entitlement to get the leave encashed but about the numkber of days to which the petitioner is entitled. Such a question could have been decided by the labour court in these proceedings. As mentioned above merely because the employer disputes this aspect, is no ground to oust the jurisdiction of the labour court under section 33C (2). The matter is to be looked into on the basis of claim made by the petitioner inhis application and not the replyfiled by the management.Once it is accepted that this is one of theservice conditions of the workman that he would be entitled to get the leave encashed upto a particular limit,claiming this leave encashment byfiling application under section 33C(2) would be admissible. If there is a dispute as to how much leave was to credit of petitioner which he could encash, such a dispute can be decided in these proceedings which is incidental to themain issue. Adjudication can be about the entitlement and not when the claim is basedon accepted service conditions. The matter was not examined by labour court from this angle at all.

B. WORDS & PHRASES. 'Entitlement to receive'Meaning of.

Held.

However where the workman claims a benefit flowing from a pre exiswting right and approaches the labour court under section 33C(2) for computation of the right in terms of money and the employer disputes theexistence of the right, the labour court will have the jurisdiction to determine the question, whether the right exists and if the existence of right isestablished, then, to proceed to compute the benefit flowing therefore in terms of money or on its decisions recovery proceedings can start."

In case of Rajendranagar Municipality versus B.V.Perraju reported in 1995 Lab. I.C. page 2102, it has been held by the High Court of Andhra Pradesh as under:

"(a) To understand, the term 'right' like duty, can be used in a wider sense.To say that a man has a right to something is roughly to say that it is a right forhim to obtain it. Thismay entail that others ought toprovide him with it or that they ought not to prevent him from getting it (page 217 of Salmond on Jurisprudence, 12th Edition by P.J.Fitzgerald).

(b) Rights like wrongs and duties, are either moral or legal. A moralor natural right is an interest recognized and protected by a rule of morality- an interest the violationof which would be a moral wrong, and respect for which is amoral duty. A legal right,on the other hand, is an interest recognized and protected by a rule of law- an interest the violation of which would be a legal wrong done to him whose interest it is and respect for which is a legal duty. (page 218 of Salmond on Jurisprudence supra)

(c) In the generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. (page 224 of Salmond on Jurisprudence supra).

Now with these concepts, if the expression "entitled" in section 33(C)(2) is understood, can there be even a spec of doubt that such being a vested right, could it not be an existing right or the right provided for which is a right for the workman to obtain it, whichmay entail others including the employer to provide it or that they ought not to prevent the workman from getting it or that it would not be wrong for the workman to get it? Read in that context, will it not be a legal right and an interest recognized and proected by a rule of law or an advantage conferred upon the workman by a rule of law and that anysuch right or entitlement in the provision have the characteristics of a legal right detailed supra ? Can it not include a right of entitlement created by law or any law to call it a statutoryright ? A simple answer for these questions ought to be in the affirmative.

herefore, a statutory right whgich should be a legal right as an entitlement should be clearlybrought into the expression 'existing right' or the 'right provided for' which requires no proof. Here only we should press right into wages for overtime under section 59 of the Factories Act, 1948 read with section 2(h) of the Minimum Wages Act, 1948 (regarding wages) as the existing right or the right provided for, for the purpose of entitlement under section 33C(2) of the Industrial Dispues Act regarding which no proof is warranted. Mr. opal. Naik, thelealrned Advocae for a moment, did not dispue that wages for over time under section 59 of the Factories Act read with sec. 2(h) of the Minimum Wages Act is a statuory right. In the resultant effect baring the rule laid down in nthe precedent supra including the latestpronouncement-Municipal Corporation of Delhi, 1994 AIR SCW 5000 supra, the right to wages for overtime being an existing right in law, would come within the realm of the jurisdiction of an executing court for implementation by the labour court under section 33C(2) of the Industrial Dispues Act. It may be mentioned that even borrowing the expression of the SUpreme Court in Municipal Corporation of Delhi's case (1994 AIR SCW 5000) supra in para 12, when overtime thevery basis of the claim viz. statutory right isnot disputed much less can be disputed, the jurisdiction of the labour court under section 33 C(2) of the ID Act cannot be taken to be ousted."

In case of Bharat Krishak Samaj and M.L.Kakkar and others reported in 1984 I LLJ FW 251, it has been held lby the High Court of Delhi as under:

"13. S.33C(2) sets up a littlepiece ofmachinery for working out the amount where there is no industrial dispute and where the right is based eigher on a contract or a statute. It will be anomalous to hold that the workman for the purpose of mere computation of the amouhnt must go to the appropriate Govoernment every time and raise an industrial dispute for that purpose under section 10 of the Act. The claim for ovoertime wages, in my opinion, made by the workmanwas a matter for the labour court to

compute under sec.33C(2) This the Court did and arrived at the conclusion that a sum of Rs.9600/was due from the Samaj to the workman."

In case of V.M.Vankar versus IndianFarmers Fertilizer, reported in 1984 Lab. I.C.1342, it has been held by this Court as under:

"Held that the Labour Court commited an error apparently on the face of the record in holding tiat it had no jurisdiction to entertain the application under section 33C (2). The petitioner employee did not seek to establish a new right. The pay scale attached to the workman discharging the functions as bag stichers, bag fillers etc.had already been determined by the agreement arrived at by consent. The petitioner merely sought enforcoement of this right which was denied to him on the basis that he was not discharging duties in such a capacity. The dispute, therefore, was limited to the controversy ranging around the factual issue as to whether or not the petitioner was discharging duties in such capacity It could not be said that the petitioner was inviting the labour court to create a new right in his favour for the first time. Nor could it be said that the labour court was invited to categorize or classify the workman who were entitled to the higher pay scale applicable to bag stitchers, bag fillers, pointsmen etc. The task of classification had already beencompleted by the parties by virtue of the settlement arived at in the course of conciliation proceedings. The only task which required to be performed was to decide the question as to whether the assertion made by the employee that he was actually discharging the functions as bag stitcher, bag filler etc. was made good on the basis of the evidence and the material produced before the labour court surely there could not be a reference under section10(1) simply in order to determine this issue. It was in fact not an industrial dispute in the strict sense. The question was one of the ascertaining on the basis of the evidence and material as to what exact work the workman was doing sismply in order to work out the existing rights as per the binding agreement. It was onlyfor the incidental and ancillary purpose of determining the salary

payable to the workman on the basis of the existing binding agreement that the inquiry was required to be undertaken. It could hardly be said that it was an industrial dispute in the larger sense which was required to be resolved on policy or principle. No quesution of principle or policy or conferment of new rights arose at all. It was merely 'working out' of existing rights depnding on the finding recorded in the context of the factual controversy as to whether or not the petitioner was doing this work. Thus, it was merely an incidental or ancillary question which required to be resolved by the labour court in exercise of powers under section 33C(2) in discharging functions analogous to the functions discharged by the executing Court."

In case of Shivaji Gulabrao Bhoite and B.N.Biscuit Confectionery Works and another reported in 1968 II LLJ 73, it has been held by the High Court of Bombay as under on page 74 of the report :

" The petitioner in this case made an application to respondent no. 2 which is the first labour court, for recovery of ovoer time allowance from respondent No. 1 factory.The labour court, relying upon the decision of the Allahabad High Court in Kays Construction Company Private Ltd. (1962II LJ 8), held held that the overtime wages did not differ from earned wages and, therefore, the labour court had no jurisdictionto entertain the application under s. 33C(2) of the ID Act.Obviously this decision is untenable in view of the decisionof this court in special civil application o. 389 of 1967 renderedon 7 January 1963 and the decision of the supreme court in East India Coal Company Ltd. v. Rameshwar and others (1968 I LLJ 6). On this question, Sri John for respondent has absolutely no answer.

He, however,tried to contend that there is no merit in the application and the applicant was absent. The only thing that can be said on this point is that the labour court did not dispose of the matter on merits oron the ground of absence of the appolicant. It disposed it ofonly on the short point that the labour court has no jurisdiction to decide the matter where evidently it was wrong.

In theresult, we set aside the order of the labour court and direct it to decide the matter on merits in accordance with law. As the application is of 1965, the labour court should hear and dispose of the matter within one month from therecord andtheorder reaching it. The petitioner will get the costs from respondents."

In case of Baboo Husain v. N.P.Napany, reported in 1978 (37) FLR page 10, it has been held by the learned Single Judge of this Court as under :

"When a serious responsibility rests on the shoulder of an employee and he had by andlarge to remain on or about the premises of the employer throughout and makehimself available to meet the demands which can or mayarise, the employee cannot properly attend to any of the positive work or leave the premisesor consider himself free to do what he likes as if hewere off duty.Itis specious to contend that the petitioner is not entitled to claim overtime wages though he had tokeep himself available during all the three shifts he being the Boiler Attendant employed by the employer. He must therefore be considered as being on duty evenif he maynot be actually working.

It has been held on page 14 of the said decision as under :

"As is evident from the aforesaid passage even the witnesses of the employer were obliged to admit that the petitioner was theonlyboiler attendant attached to the factory which was working during all the three shifts every day. A question similar to theone posed by thepresentpetitionin regard to the rightsof an employee who is required to be at the back and call of the employer and keep himself in readiness formaking himself available throughout the day arose in special civil application No. 672/63 decided by J.B.Mehta,J. on February 6, 1968. There the question arose in relation to the duties discharged by a Nurse and the Court came to the conclusion that inasmuch as the employee had to keephimself available at all the

relevanttimes.It can be said that he was required to work during that period. The reasoning is obvious. WHen a serious responsibility restsonthe shouldersof an employee and hehas by and large to remain on or about the premisesof the employer throughout and make himself availabletomeet thedemands which canor may arise the employee cannot attend to any of his private work properly or leave the premisesor consider himself free to do what he likesas if he were off duty. Even if, therefore, he maynot beactualy working, he would have to be considered as being on duty.In view of the legal position as settled by this High Court in the aforesaid matter as early as in 1968, it is specious to argue that the petitioner is not entitled to claim overtime wages though hehad to keep himself at the back andcall of the employer and to make himself available during all the three shifts,he being theonly boiler attendant employed by the employer.The view taken by the learned authority was right and the learned appellate Judgeshas committed an error apparent on thefaceof the record in taking a contrary view. The decision of the learned appellate Judgeunder the circumstances, in so far as it is adverse to thepetitioner on the aforesaid score must, therefore, be quashed. "

Thus, taking into consideration the statutory provisisons, objects thereof and the decisions of the apex court and this Court as also various other High Courts, one thing is very much clear that in the present case, the respondent workmen have claimed overtime wages under theprovisions of the Minimum Wages Act which is a statutory pre-existing right of the respondents-workmen. Under the Minimum Wages Act, the working hours are fixed and if any workman is required to workmore than prescribed working hours, then, the workman is entitled for overtime wages which is a legally vested right under the provisions of the Statute itself. It is not the case of the petitioner Board that the provisions of the Minimum Wages Act, 1948 are not aplicable. In view of the decision of the apex court in case of Patel Ishwarbhai (supra) as also the decision in case of Tubewell Operator working in the Panchayat (supra), the provisions of the Minimum Wages Act are applicable and attracted and it is held the said Act is applicable to theother Authorities being a Scheduled Employment.

Therefore, taking intno consideration these facts, the labour court has jurisdiction to decide the claim of overtimewages of the respondents workmen while exercising thepowers and jurisdictioln under section 33C(2) of the I.D. Act,1947. The labour court has also power to decide and determine the incidental question if the employer has disputed the claim of the workman. Therefore, the labour court has not committed any error while entertaining and examining the claimof overtime wages under the provisionsof section 33C(2) of the ID Act. The claimof overtime wages is not a new right which would require adjudication. On the contrary, it is a recognized, existing, contractual and statutory right based on the service conditions which can be claimed under section 33C(2) of the ID Act against the employer.

Now, the question is required to be examined as to whether the labour court has committed any error while allowing the said recovery applications or not. The respondent workman Shri KetanbhaiPandya has filed affidavit in reply against the petition and has pointed out that according to the record of the labour court, itis clear that the respondent workmen are discharging duties for 12 hours in a day. It is also contended that the Minimum Wages Act is applicable and the payment of overtime wage is a statutory right which has been rightly decided by the labour court while exercising the powers under section 33C (2) of the ID Act.

Now, considering the order passed by the labour court, there is an evidence and admission of the petitioner board wherein it is stated that a capacity of pump set is20 to 24 hours per day and at the Dam Station, two posts of Pump Operators are available. The witness has further deposed that the operators are maintaining worksheet of their working hours. It is also deposed by the witness that in pumping station, Diesel Buster Station,in day and night, the watchmen are required to work. In case of any difficulty in working of pumping station, power cut, damage on line, low voltage and if the flow of thewaterisnot properly carried out, then, in each ocasion,the workman is required to remain on duty and in such ocasion, more hours' working is required by the workman. The posts of watchman are available in each head Works,DamSite, Pumping Station and there are two separate watchmen for day and night. The said witness has further deposed that the workof pump operator, valveman, attendant, lineman are inter connected with each other anddepend upon each other. Heh as further deposed that he is not sure about the working hours and period for which the said work is to be carried out by

the workman.Hehas further deposed that the worksheet has to beprepared by the workmman concerned and which is being certified by the supervisor and whereinthe working hours are being mentioned. There are two shifts in the pumping station. These workmen are not entitled to weekly holidays. The labour court has rightly entertained the claim and has rightly interpreted that two shifts mean 12 hours of one shift which would justify the claim of the respondents workmen for overtime wages. The labour court has also considered the nature of work and other attending circumstances forproviding water in a different villages with thehelpof Pumping Operators, Diesel Operator, Watchmen, Lineman, Valveman and Attendant. Therefore, after considering the oral evidence of Shri Sureshbhai Motibhai Chauhan vide Exh.27 which has been discussed at para 18 of the order, the labour court has, in terms, come to the conclusion that the workmen had, in fact,worked for 12 hours in a day having two shifts in 24 hours which fact has been admitted by the witness of the petitioner board. The labour court has also appreciated the fact as to whether the theactual work of 12 hours per day has been performed or not by the workmen. The labour court has also considered the oral and documentaryevidence and has come to the conclusion in paragraph 23 of the impugned order that even in case the actual work is not carried out for 12 hours, the workman shall have to remain present onthe site of working and unless and until the work isnot completed, he will not be able to leave the place of working and that attendence is also included in working hours and for that also, the workmen are entitled to overtime wages as held in case of Baboo Husain (supra)

I have perused the entire impugned order passed by the labour court. I have also gone through the reasoning part from pargraph 13 to 33. The labour court has applied the mind and has discussed each and every aspects of theoral and documentary evidence brought on record. The labour court has rightly come to the conclusion that the claimof over time wages under the provisions of the Minimum Wages Act is a statutory and pre-existing right and, therefore,thelabour court has rightly granted and allowed the recovery applications.

I have also considered the decisions of the apex Court and of this Court cited at the Bar by Mr.Munshaw. It is true that while exercising the powers under section 33C(2) of the ID Act, the labour court cannot adjudicate a new right or determine a new entitlement of the workmen which would fall within the purviewof section 10 (1) of

the ID Act, 1947. However, on the facts and in the circumstances of the present case, those decisions are not applicable. Here, in the case before hand, the labour court has not adjudicated any new right or determined any new entitlement of the workmen but has decided the right of the workmen to overtime wages under the Minimum Wages Act which was, admittedly, not a new rightor entitlement but was pre-existing and statutory right and, therefore, the principles laid down in the decisions cited by Mr. Munshall shall not apply to the facts of the present case. In the present case, the existing right under the Minimum Wages Act and the Rules framed thereunder has been, on evidence, found by the labour court. The labour court has found that the respondents workmen have worked for ovoer time and, therefore, the labour court was justified in allowing the recovery applications and in doing so, the labour court has not decided anynew right. As regards delay and limitation, this Court has considered the very same question in 1998 II GLH page 996 while relying upon two decisions of the apex court reported in AIR 1964 SC page 743 and 752. Therefore, the question of delay and limitation canot come in the way of the respondent workmen.

After perusing the entire order passed by the labour court, I am of the view that the labour court has not committed any jurisdictional error. The learned advocate for the petitioner board has not been able to point out any error either in law or on facts which is apparent on the face of the record. He has also not been able to point out any infirmity in the order of the labour court impugned herein. Onthe contrary, the labour court has applied its mind andhas given detailed reasons in support of its conclusions which are findings of fact based on legal evidence. Learned advocate for the petitioner board has not been able to point out that the findings recorded by the labour court are perverse or are based on no evidence.

As per the decision of the apex court in case of Ahmedabad Municipal Corporation versus Virendrakumar Jayantibhai Patel reported in 1998 (1) GLR page 17 as also the decision of this court in case of Chhagan Ranchhod Kukavava versus General Manager, WR, Bombay reported in 1998 (1) GLH 461 as also the case reported in AIR 2000 SC 931, an order passed by the labour court and/or the tribunal can be challenged under Article 226 and/or 227 of the Constitution of India only if there is any jurisdictional error or procedural error apparent on

the faceof the record. The High Court, while exercising its jurisdiction under Article 226 and/or 227 of the Constitution of India, cannot convert itself into a court of appeal and assess the sufficiency or otherwise of the evidence in support of the finding of fact reached by the competent courts or the tribunal. Therefore, in view of the aforesaid decisions of this Court and of the apex court, since no infirmity and/or jurisdictional error has been poinnted out by thelearned advocate for the petitioner board and since he has also not been able to establish that the findings of fact recorded by the labour court are based on no evidence, this court cannot interfere with the impugned order pased by the labour court in the recovery applications. Therefore, there is no substance in the present petitions filed by the petitioner board. Accordingly, all these petitions are dismissed. Rule in each petition is discharged. Ad-interim relief granted earlier in each petition shall stand vacated with no order as to costs.

In view of the fact that this court has dismissed this group of petitions and also in view of the fact that the labour court has passed the orders on 26.7.1999, after about five years from the date of filing of the recovery applications before the labour court, it would be just and proper a
direct the petitioner to implement the said order passed by the labour court Amreli dated 26.7.99 in favour of each respondent in each petition within period of two months from the date of receipt of certified copy of this order. Accordingly, the petitioner board is directed to implement the impugned order passed by the labour Court, Amreli in letter and spirit within two months from the date of receipt of certified copy of this order. Office is directed to send writ of the said directions immediately to the petitioner board.

Dt. .4.2000. (H.K.Rathod,J.)

Vyas